

104TH CONGRESS
1ST SESSION

S. 1090

To amend section 552 of title 5, United States Code (commonly known as the Freedom of Information Act), to provide for public access to information in an electronic format, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 28 (legislative day, JULY 10), 1995

Mr. LEAHY (for himself, Mr. BROWN, and Mr. KERRY) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To amend section 552 of title 5, United States Code (commonly known as the Freedom of Information Act), to provide for public access to information in an electronic format, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Electronic Freedom
5 of Information Improvement Act of 1995”.

6 **SEC. 2. FINDINGS AND PURPOSES.**

7 (a) FINDINGS.—The Congress finds that—

1 (1) the purpose of the Freedom of Information
2 Act is to require agencies of the Federal Govern-
3 ment to make certain agency information available
4 for public inspection and copying and to establish
5 and enable enforcement of the right of any person
6 to obtain access to the records of such agencies
7 (subject to statutory exemptions) for any public or
8 private purpose;

9 (2) since the enactment of the Freedom of In-
10 formation Act in 1966, and the amendments enacted
11 in 1974 and 1986, the Freedom of Information Act
12 has been a valuable means through which any per-
13 son can learn how the Federal Government operates;

14 (3) the Freedom of Information Act has led to
15 the disclosure of waste, fraud, abuse, and wrong-
16 doing in the Federal Government;

17 (4) the Freedom of Information Act has led to
18 the identification of unsafe consumer products,
19 harmful drugs, and serious health hazards;

20 (5) Government agencies increasingly use com-
21 puters to conduct agency business and to store pub-
22 licly valuable agency records and information; and

23 (6) Government agencies should use new tech-
24 nology to enhance public access to agency records
25 and information.

1 (b) PURPOSES.—The purposes of this Act are to—

2 (1) foster democracy by ensuring public access
3 to agency records and information;

4 (2) improve public access to agency records and
5 information;

6 (3) ensure agency compliance with statutory
7 time limits; and

8 (4) maximize the usefulness of agency records
9 and information collected, maintained, used, re-
10 tained, and disseminated by the Federal Govern-
11 ment.

12 **SEC. 3. PUBLIC INFORMATION AVAILABILITY.**

13 Section 552(a)(1) of title 5, United States Code, is
14 amended—

15 (1) in the matter before subparagraph (A) by
16 inserting “by computer telecommunications, or if
17 computer telecommunications means are not avail-
18 able, by other electronic means,” after “Federal
19 Register”;

20 (2) by striking out “and” at the end of sub-
21 paragraph (D);

22 (3) by redesignating subparagraph (E) as sub-
23 paragraph (F); and

24 (4) by inserting after subparagraph (D) the fol-
25 lowing new subparagraph:

1 “(E) a complete list of all statutes that the
 2 agency head or general counsel relies upon to au-
 3 thorize the agency to withhold information under
 4 subsection (b)(3) of this section, together with a spe-
 5 cific description of the scope of the information cov-
 6 ered; and”.

7 **SEC. 4. MATERIALS MADE AVAILABLE IN ELECTRONIC FOR-**
 8 **MAT AND INDEX OF RECORDS MADE AVAIL-**
 9 **ABLE TO THE PUBLIC.**

10 Section 552(a)(2) of title 5, United States Code, is
 11 amended—

12 (1) in the matter before subparagraph (A) by
 13 inserting “, including, within 1 year after the date
 14 of the enactment of the Electronic Freedom of Infor-
 15 mation Improvement Act of 1995, by computer tele-
 16 communications, or if computer telecommunications
 17 means are not available, by other electronic means,”
 18 after “copying”;

19 (2) in subparagraph (B) by striking out “and”
 20 after the semicolon;

21 (3) in subparagraph (C) by inserting “and”
 22 after the semicolon;

23 (4) by adding after subparagraph (C) the fol-
 24 lowing new subparagraphs:

1 “(D) an index of all major information sys-
2 tems containing agency records regardless of
3 form or format unless such an index is provided
4 as otherwise required by law;

5 “(E) a description of any new major infor-
6 mation system with a statement of how such
7 system shall enhance agency operations under
8 this section;

9 “(F) an index of all records which are
10 made available to any person under paragraph
11 (3) of this subsection; and

12 “(G) copies of all records, regardless of
13 form or format, which because of the nature of
14 their subject matter, have become or are likely
15 to become the subject of subsequent requests
16 for substantially the same records under para-
17 graph (3) of this subsection;”;

18 (5) in the second sentence by striking out “or
19 staff manual or instruction” and inserting in lieu
20 thereof “staff manual, instruction, or index or copies
21 of records, which are made available under para-
22 graph (3) of this subsection”; and

23 (6) in the third sentence by inserting “and the
24 extent of such deletion shall be indicated on the por-
25 tion of the record which is made available or pub-

1 lished at the place in the record where such deletion
2 was made” after “explained fully in writing”.

3 **SEC. 5. HONORING FORMAT REQUESTS.**

4 Section 552(a)(3) of title 5, United States Code, is
5 amended by—

6 (1) inserting “(A)” after “(3)”;

7 (2) striking out “(A) reasonably” and inserting
8 in lieu thereof “(i) reasonably”;

9 (3) striking out “(B)” and inserting in lieu
10 thereof “(ii)”;

11 (4) adding at the end thereof the following new
12 subparagraphs:

13 “(B) An agency shall, as requested by any per-
14 son, provide records in any form or format in which
15 such records are maintained by that agency.

16 “(C) An agency shall make reasonable efforts to
17 search for records in electronic form or format and
18 provide records in the form or format requested by
19 any person, including in an electronic form or for-
20 mat, even where such records are not usually main-
21 tained but are available in such form or format.”.

22 **SEC. 6. DELAYS.**

23 (a) FEES.—Section 552(a)(4)(A) of title 5, United
24 States Code, is amended by adding at the end thereof the
25 following new clause:

1 “(viii) If at an agency’s request, the Comptroller Gen-
2 eral determines that the agency annually has either pro-
3 vided responsive documents or denied requests in substan-
4 tial compliance with the requirements of paragraph
5 (6)(A), one-half of the fees collected under this section
6 shall be credited to the collecting agency and expended to
7 offset the costs of complying with this section through
8 staff development and acquisition of additional request
9 processing resources. The remaining fees collected under
10 this section shall be remitted to the Treasury as general
11 funds or miscellaneous receipts.”.

12 (b) PAYMENT OF THE EXPENSES OF THE PERSON
13 MAKING A REQUEST.—Section 552(a)(4)(E) of title 5,
14 United States Code, is amended by adding at the end
15 thereof the following: “The court may assess against the
16 United States all out-of-pocket expenses incurred by the
17 person making a request, and reasonable attorney fees in-
18 curred in the administrative process, in any case in which
19 the agency has failed to comply with the time limit provi-
20 sions of paragraph (6) of this subsection. In determining
21 whether to award such fees and expenses, a court should
22 consider whether an agency’s failure to comply with statu-
23 tory time limits was not warranted and demonstrated bad
24 faith or was otherwise unreasonable in the context of the
25 circumstances of the particular request.”.

1 (c) DEMONSTRATION OF CIRCUMSTANCES FOR
2 DELAY.—Section 552(a)(4)(E) of title 5, United States
3 Code, is further amended—

4 (1) by inserting “(i)” after “(E)”; and

5 (2) by adding at the end thereof the following
6 new clause:

7 “(ii) Any agency not in compliance with the
8 time limits set forth in this subsection shall dem-
9 onstrate to a court that the delay is warranted
10 under the circumstances set forth under paragraph
11 (6) (B) or (C) of this subsection.”.

12 (d) PERIOD FOR AGENCY DECISION TO COMPLY
13 WITH REQUEST.—Section 552(a)(6)(A)(i) is amended by
14 striking out “ten days” and inserting in lieu thereof
15 “twenty days”.

16 (e) AGENCY BACKLOGS.—Section 552(a)(6)(C) of
17 title 5, United States Code, is amended by inserting after
18 the second sentence the following: “As used in this sub-
19 paragraph, the term ‘exceptional circumstances’ means
20 circumstances that are unforeseen and shall not include
21 delays that result from a predictable workload, including
22 any ongoing agency backlog, in the ordinary course of
23 processing requests for records.”.

24 (f) NOTIFICATION OF DENIAL.—The last sentence of
25 section 552(a)(6)(C) of title 5, United States Code, is

1 amended to read: “Any notification of any full or partial
 2 denial of any request for records under this subsection
 3 shall set forth the names and titles or positions of each
 4 person responsible for the denial of such request and the
 5 total number of denied records and pages considered by
 6 the agency to have been responsive to the request.”.

7 (g) MULTITRACK FIFO PROCESSING AND EXPE-
 8 DITED ACCESS.—Section 552(a)(6) of title 5, United
 9 States Code, is amended by adding at the end thereof the
 10 following new subparagraphs:

11 “(D) (i) Each agency shall adopt a first-in,
 12 first-out (hereafter in this subparagraph referred to
 13 as FIFO) processing policy in determining the order
 14 in which requests are processed. The agency may es-
 15 tablish separate processing tracks for simple and
 16 complex requests using FIFO processing within each
 17 track.

18 “(ii) For purposes of such a multitrack sys-
 19 tem—

20 “(I) a simple request shall be a request re-
 21 quiring 10 days or less to make a determination
 22 on whether to comply with such a request; and

23 “(II) a complex request shall be a request
 24 requiring more than 10 days to make a deter-

1 mination on whether to comply with such a re-
2 quest.

3 “(iii) A multitrack system shall not negate a
4 claim of due diligence under subparagraph (C), if
5 FIFO processing within each track is maintained
6 and the agency can show that it has reasonably allo-
7 cated resources to handle the processing for each
8 track.

9 “(E) (i) Each agency shall promulgate regula-
10 tions, pursuant to notice and receipt of public com-
11 ment, providing that upon receipt of a request for
12 expedited access to records and a showing by the
13 person making such request of a compelling need for
14 expedited access to records, the agency shall deter-
15 mine within 5 days (excepting Saturdays, Sundays,
16 and legal public holidays) after the receipt of such
17 a request, whether to comply with such request. No
18 more than one day after making such determination
19 the agency shall notify the person making a request
20 for expedited access of such determination, the rea-
21 sons therefor, and of the right to appeal to the head
22 of the agency. A request for records to which the
23 agency has granted expedited access shall be proc-
24 essed as soon as practicable. A request for records
25 to which the agency has denied expedited access

1 shall be processed within the time limits under para-
2 graph (6) of this subsection.

3 “(ii) A person whose request for expedited ac-
4 cess has not been decided within 5 days of its receipt
5 by the agency or has been denied shall be required
6 to exhaust administrative remedies. A request for ex-
7 pedited access which has not been decided may be
8 appealed to the head of the agency within 7 days
9 (excepting Saturdays, Sundays, and legal public holi-
10 days) after its receipt by the agency. A request for
11 expedited access that has been denied by the agency
12 may be appealed to the head of the agency within
13 2 days (excepting Saturdays, Sundays, and legal
14 public holidays) after the person making such re-
15 quest receives notice of the agency’s denial. If an
16 agency head has denied, affirmed a denial, or failed
17 to respond to a timely appeal of a request for expe-
18 dited access, a court which would have jurisdiction
19 of an action under paragraph (4)(B) of this sub-
20 section may, upon complaint, require the agency to
21 show cause why the request for expedited access
22 should not be granted, except that such review shall
23 be limited to the record before the agency.

24 “(iii) The burden of demonstrating a compelling
25 need by a person making a request for expedited ac-

1 cess may be met by a showing, which such person
2 certifies under penalty of perjury to be true and cor-
3 rect to the best of such person’s knowledge and be-
4 lief, that failure to obtain the requested records
5 within the timeframe for expedited access under this
6 paragraph would—

7 “(I) threaten an individual’s life or safety;

8 “(II) result in the loss of substantial due
9 process rights and the information sought is not
10 otherwise available in a timely fashion; or

11 “(III) affect public assessment of the na-
12 ture and propriety of actual or alleged govern-
13 mental actions that are the subject of wide-
14 spread, contemporaneous media coverage.”.

15 **SEC. 7. COMPUTER REDACTION.**

16 Section 552(b) of title 5, United States Code, is
17 amended by inserting before the period in the sentence
18 following paragraph (9) the following: “, and the extent
19 of such deletion shall be indicated on the released portion
20 of the record at the place in the record where such deletion
21 was made”.

22 **SEC. 8. DEFINITIONS.**

23 Section 552(f) of title 5, United States Code, is
24 amended to read as follows:

25 “(f) For purposes of this section—

1 “(1) the term ‘agency’ as defined in section
2 551(1) of this title includes any executive depart-
3 ment, military department, Government corporation,
4 Government controlled corporation, or other estab-
5 lishment in the executive branch of the Government
6 (including the Executive Office of the President), or
7 any independent regulatory agency;

8 “(2) the term ‘record’ means all books, papers,
9 maps, photographs, machine-readable materials, or
10 other information or documentary materials, regard-
11 less of physical form or characteristics; and

12 “(3) the term ‘search’ means a manual or auto-
13 mated review of agency records that is conducted for
14 the purpose of locating those records which are re-
15 sponsive to a request under subsection (a)(3)(A) of
16 this section.”.

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